

United States District Court
Southern District of Texas
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FEB 3 2014

David J. Bradley, Clerk of Court

CLIFFORD EATON,

Plaintiff,

v.

Case No. 4:12-cv-03043

PLAZA RECOVERY, INC.,

Defendant.

**PLAINTIFF'S RESPONSE AND OBJECTIONS TO
DEFENDANT'S BILL OF COSTS AND MOTION FOR ENTRY OF COSTS**

Plaintiff, Clifford Eaton ("Eaton"), pro se, respectfully submits this response and objections to the Bill of Costs and Motion for Entry of Costs filed herein by Defendant, Plaza Recovery, Inc. ("Plaza Recovery").

I. INTRODUCTION

1. On January 3, 2014, the Court granted Plaza Recovery's motion for summary judgment. (Docket No. 27). On the same date, Final Judgment was entered. (Docket No. 28).

2. On January 17, 2014, Plaza Recovery filed a Bill of Costs and Motion for Entry of Costs. (Docket Nos. 29 and 30). Although counsel for Plaza Recovery mailed a copy of the filings to Eaton on January 17, 2014, he did not receive them until January 28, 2014. See Declaration of Clifford Eaton, attached and incorporated herein, at ¶ 2.

II. ARGUMENT AND AUTHORITY

3. Plaza Recovery requests that costs totaling \$450.00 be taxed against Eaton. This figure represents \$200.00 claimed for fees and disbursements for printing and \$250.00 claimed for fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case.

4. Eaton objects to each of the two costs claimed by Plaza Recovery.¹ The amounts appear to be excessive and are unsupported by any itemization or showing of necessity. In fact, Plaza Recovery does not even indicate the number of pages and cost per page for which it seeks reimbursement.

5. Eaton acknowledges that as a prevailing party, Plaza Recovery may be entitled to recovery of certain costs. If the party being taxed has not specifically objected to a cost, the presumption is that the costs were necessarily incurred for use in the case and will be taxed. Embotelladora Agral Regiomontana, S.A. de C.V. v. Sharp Capital, Inc., 952 F.Supp. 415, 417 (N.D. Tex. 1997). However, once an objection is raised, the party seeking costs bears the burden of verifying that the costs were necessarily incurred in the case rather than for the convenience of counsel. Fogleman v. ARAMCO, 920 F.2d 278, 286 (5th Cir. 1991).

6. In the instant case, Plaza Recovery has not provided sufficient itemization of expenses for the costs claimed, nor has it met its burden showing necessity. Accordingly, the request for each of the costs claimed must be disallowed.

III. CONCLUSION

7. For the foregoing reasons, Plaza Recovery's Bill of Costs should be disallowed and its Motion for Entry of Costs denied.

¹To the extent these objections appear untimely, Eaton submits there is good cause for his not filing objections sooner, and the Court should exercise its discretion to consider them. See Declaration of Clifford Eaton, ¶¶ 2, 3.

Respectfully submitted,

CLIFFORD EATON
Plaintiff, pro se

Date: Jan. 29, 2014



CLIFFORD EATON
Register No. 12878-074
FCI Otisville
P.O. Box 1000
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify under penalty of perjury that the foregoing document was mailed to the Clerk's Office for filing on January 29, 2014. On the same date, a true and complete copy was served upon the following case participant via first-class mail:

Kandy E. Messenger, Esq.
Sprott, Rigby, Newsom,
Robbins & Lunceford, P.C.
2211 Norfolk, Suite 1150
Houston, TX 77098


CLIFFORD EATON

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David J. Bradley, Clerk of Court

January 29, 2014

Office of the Clerk
United States District Court
P.O. Box 61010
Houston, TX 77208

RE: **Clifford Eaton v. Plaza Recovery, Inc.**
Case No. 4:12-cv-03043

Dear Sir/Madam:

Enclosed for filing in the above-entitled action please find Plaintiff's Response and Objections to Defendant's Bill of Costs and Motion for Entry of Costs.

Thank you for your assistance with this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Clifford Eaton", written over a circular stamp or seal.

Clifford Eaton
Register No. 12878-074
FCI Otisville
P.O. Box 1000
Otisville, NY 10963-1000

enclosure

NAME Clifford Eaton

REGISTER NO. 12878-074

FEDERAL CORRECTIONAL INSTITUTION

P.O. BOX 1000

OTISVILLE, NY 10963

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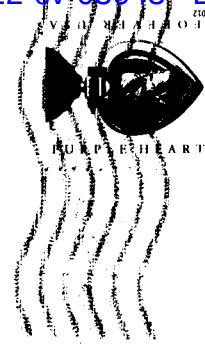
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